Supreme Court, U.S.
FILED

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No.

In The

# *Supreme Court of the United States*

Edna J. Valentine-Staats,
The United States Bankruptcy Trustee, and
Their Successors In Interest
***Petitioners***

v.

The Government of The District of Columbia,
The Estate of Daniel B. Delaney,
Lawrence Elliott In His Personal Capacity
***Respondents***

## PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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38 pp

## QUESTIONS PRESENTED FOR REVIEW

I. Whether the District of Columbia Superior Court, Probate Division, ab initio, lacked power or jurisdiction to act outside of the forum state, with respect to persons or property located outside of the District of Columbia, in Virginia, and whether when it did so it violated the 5th, and 14th Amendments to the Constitution of the United States, in accordance with the holding stated in ***Hanson v Denckla***, 357 U.S. 235, 78 S.Ct. 1228, 2 l. Ed. 2d. 1283 (1958)?

II. Whether the Probate Court of the District of Columbia, in seizing the funds in Virginia joint and survivor accounts and assessing costs and fees, under threat of incarceration, without notice, before any hearing or judgment, conducted an illegal taking of liberty and property in violation of the 5th and 14th Amendments to the Constitution of the United States contrary to the holdings in a line of cases including ***Fuentes v. Shevin***, 407 U.S. 67, 92 S.Ct. (1983)?

III. Whether the Probate Court's actions denying hearing, and denying acceptance of evidence on all of Petitioner's defenses, including forgery, fraud and evasion, timely presented in defense of a collateral tort lawsuit filed by an Estate against Petitioner in favor of the six month statute of limitations for presenting a caveat (will challenge), and in ignoring the statute of limitations specific to fraud and evasion, resulted in a violation of due process of law as contained in the 5th and 14th Amendments to the Constitution of the United States?

**Parties to the Proceedings**

**Petitioner/Defendant and Her Successors in Interest:**

Edna J. Valentine, Petitioner/Defendant

Sherman Lubman, The Federal Bankruptcy Trustee for the Estate of Edna J. Valentine

Raymond Valentine, and William D.C. Valentine, Successors in interest to the Federal Bankruptcy Trustee.

**Respondent/Plaintiff:**

The Probate Division of the District of Columbia Court System, and the District of Columbia Government.

The Estate of Daniel B. Delaney:

By: Original Personal Representative Lawrence Elliott

Replacement Personal Representative Christopher Hoge, Esq.

**Counter-Claim/Cross Claim Respondents:**

Lawrence Elliott, Removed Personal Representative

Charles Goldstein, CPA*

William Bethune, Esq.*

Jason Green, Esq.*

Eliot Rosen, Esq.*

* Indicates a recipient of funds seized from the Petitioner(s) by actions of the Probate Court.

**Interested Persons and Intervenors:**

The National Association of Colored People

The National Heart Association

The American Cancer Society

National Arthritis Foundation

## Table of Contents

**Questions Presented for Review** ..... -i-

Parties to the Proceedings ..... -ii-

Table of Contents ..... -iii-

Table of Authorities ..... -vi-

Table of Citations To This Case ..... -viii-

District of Columbia Court of Appeals Opinions ..... -viii-

Superior Court of the District of Columbia,
Probate Division Decisions and Orders ..... -viii-

Statement of Basis for Jurisdiction of this Court ..... 1

Constitutional Provisions, Statutes and Regulations Involved
in this Case ..... 1

Constitutional Provisions ..... 1

Virginia Code ..... 2

District of Columbia Code ..... 2

Statement of the Case ..... 4

The Result of this Case on Appeal to Date ..... 10

The Ultimate Result of this case ..... 12

Objections Citing Jurisdictional, Constitutional Due Process and Substantive Errors of the Court Were Presented in the Probate Court and later in the District of Columbia Court of Appeals ..... 13

The Following Are Direct Quotes From the Brief in the Court of Appeals ..... 14

**ARGUMENT** ..... 14

I. The District of Columbia Superior Court, Probate Division, ab initio, lacked power or jurisdiction to act outside of the forum state, with respect to persons or property located outside of the District of Columbia, in Virginia, and when it did so it violated the 5th, and 14th Amendments to the Constitution of the United States in accordance with the holding stated in ***Hanson v Denckla***, 357 U.S. 235, 78 S.Ct. 1228, 2 l. Ed. 2d. 1283 (1958). ..... 15

Facts summarized as related to this issue ..... 15

Standard Applicable To An Exercise of Jurisdiction Outside of the Forum State ..... 17

The Actions of the Probate Court Violated That Standard 18

II. The Probate Court of the District of Columbia, in seizing the funds in Virginia joint and survivor accounts and assessing costs and fees, under threat of incarceration, without notice, before any hearing or judgment, conducted an illegal taking of liberty and property in violation of the 5th and 14th Amendments to the Constitution of the United States, and contrary to the holdings in a line of cases including

*Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. (1983). . . . . 20

Facts and Status of the Case At the Time of the Seizures of Petitioner's Property, Summarized . . . . . 20

Standards Applicable To Procedural Due Process: . . . . . 22

III. The Probate Court's actions denying hearing, and denying acceptance of evidence on all of Petitioner's defenses, including forgery, fraud and evasion, timely presented in defense of a collateral tort lawsuit filed by an Estate against Petitioner in favor of the six month statute of limitations for presenting a caveat (will challenge), and in ignoring the statute of limitations specific to fraud and evasion, resulted in a violation of due process of law as contained in the 5th and 14th Amendments to the Constitution of the United States. . . . . 25

Misapplication of the Statute of Limitations . . . . . 25

The Cumulative Due Process Effect of these Errors of Procedure . . . . . 26

Conclusion . . . . . 28

## Table of Authorities

**Constitution of The United States**


5th , and 14th Amendments ..... -i- , 20, 21, 25, 26
Article [V] ..... 2
Article [XIV] Section 1 ..... 2
Constitutional Due Process ..... Passim


**United States Code:**


42 U.S.C. § 1983 ..... 14


**Virginia Code:**


§ 6.1-125.1(1) ..... 2, 7, 15
§ 6.1-125.5 ..... 2, 4, 7, 9, 15


**District of Columbia Code:**


§ 12-301 [Statutes of Limitations] ..... 2
§ 12-301-(8) ..... 25
§ 20-108.01 ..... 2, 3, 7, 11, 25
§ 20-108.1(a) ..... 25
§ 20-108.1(b) ..... 25
§ 20-305 ..... 3, 7, 10, 26


**Cases:**


***Arnett v.Kennedy***, 416 U.s. 134, 94 S. Ct 1633 (1974) ... 24

***Board of Regents of State Colleges v. Roth***, 408 U.S. 564, 92 S. Ct 2701 (1972) ..... 24

***City of West Covina v. Perkins***, 525 U.S. 234, 119 S.Ct 678 (1999) ..... 13

***Cleveland Bd. Of Education v. Loudermill***, 470 U.S. 532, 105 S.Ct. 1487, 84 L. Ed2d 494 (1985) ..... 26

***Fuentes v. Shevin***, 407 U.S. 67, 92 S.Ct. (1983) . -i-, 20, 21

***Hanson v Denckla***, 357 U.S. 235, 78 S.Ct. 1228, 2 l. Ed. 2d. 1283 (1958) ..... -i-,14, 15, 17, 19

**In re Estate of Delaney**, WL1562388 ..... -viii-

***Walker v. City of Huchinson, Kansas***, 352 U.S. 112, 77 S.Ct 200 (1956) ..... 23

***Zinermon, V. Burch***, 494 U.S. 113, 110 S.Ct. 975 (1990) ..... 23, 24

**Other Authorities:**

"American Rule", for assessment of costs and attorney's fees ..... 13

**Table of Citations To This Case**

**District of Columbia Court of Appeals Opinions**

**Order Denying Rehearing, August 6th, 2003** A- 6-7

**Opinion, In re Estate of Delaney**, WL1562388
(DC App March 27th, 2003) A-10-57

**Superior Court of the District of Columbia, Probate Division Decisions and Orders:**

**Order Finding Jurisdiction, December 21, 1995** A-87-93

**Order Seizing Virginia cash, January 24, 1997** A-1-3

**Order Assessing Costs, January 27, 1997** A- 4-5

**Order Denying Summary Judgment (To Plaintiff Estate) March 31, 1997** A-94-97

**Order Dismissing All of Petitioner's Pleadings, Motion to Amend, New Complaint for Fraud, Proffers and Filings of Evidence, Etc (Applying six Month Statute of Limitations) June 27, 1997** A-98-104

**Findings of Fact, Conclusion of Law and Order, After "Accounting Bench Trial", March 28, 1999** A-60-83

**Judgment Order, October 20th, 1999** A-84-85

**Judgment, October 20th, 1999** A-86

## Statement of Basis for Jurisdiction of this Court

Jurisdiction is proper in this Court. This appeal is from the judgment of the highest court of the District of Columbia of issues involving Constitutional violations. The judgment of the District of Columbia Court of Appeals was entered on March 27, 2003. The Order denying rehearing in banc was entered on August 6th, 2003.

The present Petition for Writ of Certiorari is filed within 90 days of the denial of the Petition for Rehearing. Thus, this petition for Certiorari was timely filed and this Court has jurisdiction to hear all claims by the Petitioners.

## Constitutional Provisions, Statutes and Regulations Involved in this Case:

### Constitutional Provisions:

In pertinent part, the Constitutional Provisions, and Statutes here involved are:

### Amendments to the Constitution of the United States of America.

**Article [V]** No person shall... be deprived of ... liberty, or property without due process of law....

**Article [XIV] Section 1.** No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

**Virginia Code:**

**§ 6.1-125.1(1)** ...account... a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, a savings account, a certificate of deposit, share account and other like arrangement.

 **6.1-125.5** Right of survivorship. A. Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created.

**District of Columbia Code**

**§ 12-301 [General Statutes]**

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

...

(8) for which a limitation is not otherwise specially prescribed– 3 years.

**§ 20-108.1 [Renumbered as § 20-108.01]**
**Effect of fraud and evasion.**

(a) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this title or if fraud is used to avoid or circumvent the provisions or purposes of this title, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchases) benefitting from the fraud, whether innocent or not. ***Any proceeding must be commenced within 2 years after the***

***discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of the commission of the fraud.*** This section has no bearing on remedies relating to fraud practiced on a decedent during lifetime that may affect the succession to the decedent's estate. [emphasis added]
(b) Notwithstanding the remedy provided in subsection (a) of this section, ***nothing in this title [§ 20-Probate] shall be construed to validate any document with respect to which there was any misrepresentation, fraudulent act, or illegal provision in connection with its execution.*** [emphasis added]...renumbered as § 20-108.01 on March 21, 1995.

**§ 20-305. Complaint to contest the validity of a will.** Except as provided in section 20-353(b), any person may file a verified complaint to contest the validity of a will within 6 months following notice by publication of the appointment or reappointment of a personal representative under section 20-704. The persons filing the complaint shall give notice to all interested persons.

**Statement of the Case**

On August 6th, 1993, decedent, Daniel B. Delaney (Delaney), the long-time companion of the Petitioner (Valentine), died.

On August 6th, 1993, two Virginia Bank accounts existed in the joint and survivor names of Delaney and Valentine. One, containing about $80,000, was opened in 1986, in the Virginia State Credit Union. The second account, a "cash management account" containing about $700,000, in the McLean, Virginia office of Merrill Lynch.

That account was converted to joint and survivor status by transactions begun on July 26th, 1993, and completed just prior to death on August 2, 1993. That account was set up by Delaney following the advice of his financial advisor, S. Henry Harris. Both resulting accounts were titled in the depository agreements as joint and survivor accounts for the benefit of Delaney, a District of Columbia resident, and the named joint survivor Petitioner Valentine, a Virginia resident.

Following the death of Delaney, and his burial in the Valentine family plot in Petersburg, Virginia, Valentine appeared at the Virginia offices of the Credit Union and closed the account into the Merrill Lynch Account. She then closed the Merrill Lynch account into another Merrill Lynch account in the name of herself and her daughter. All of the foregoing transactions were correct in accordance with the Virginia Code, § 6.1-125.5, "right of survivorship."

On August 17th, 1993, the first of two purported "wills", dated July 18th, 1993, was filed with the Probate Court by the named personal representative, Lawrence Elliott ("Elliott). On March 1st, 1994, a second purported "will" was filed by Elliott. The first "will" left everything to the Petitioner. The second "will" left a small bequest to Valentine, decedent's house to the Personal Representative, and the bulk of his estate to charities.

That "will" also contained a clause stating that: "... all that I own in any form is my property, with no predeath gift intended."

On March 28th, 1994 a notice was purportedly sent to Valentine of the filing of an after-discovered will. In fact, Valentine alleged, the notice envelope she received contained, not a copy or notice of filing of the after discovered "will", but rather another copy of the first will. Valentine did not at that time file a will challenge "caveat" to

either will, since she believed that "will number 1" was the operative will and all of the Estate property was supposed to go to her.

On June 27, 1995, after the six month time limit for filling a will challenge has expired, the Estate's Personal representative, Elliott, filed a lawsuit (A.87) against Valentine for tortious conversion of property and undue influence in obtaining the joint and survivor accounts.

Valentine was served with the complaint and thereafter obtained counsel. Counsel, by special appearance, objected to the jurisdiction of the court (A. 93). By Order entered on December 21, 1995, the Probate Court ruled it had jurisdiction to conduct a trial for tortious conduct alleged to have occurred in the District of Columbia (A93).

On February 1, 1996, Defendant Valentine filed her verified answer to the complaint against her denying all allegations of wrongdoing and alleging fraud and forgery of the probated will, the after-discovered will. She also denied all of the charges of misconduct against her.

On January 23rd , 1997 the Petitioner and her counsel appeared in the Superior Court of the District of Columbia, Probate Division for a "status call" in the tort case against the Petitioner. No notice had been given as to any other purpose of the hearing than to hear about the status of the case. No evidence was taken at that hearing although representations were made by both counsel. No judgment against Petitioner had previously been entered, and none was entered at the hearing or immediately thereafter.

In that hearing, the Petitioner was threatened with incarceration and Ordered to bring the disputed property into the court's jurisdiction. The oral seizure order was reduced to writing and entered the next day, January 24th, 1997 (A. 1-3).

By Order entered January 27th, 1997 costs for the

accounting for the assets seized were ordered to be paid as incurred, by the Petitioner (A.4-5). Ultimately the Petitioner was Ordered to pay over, in addition to the original order of $780,000, about $38,000 in accounting costs, and about $14,000 in collection fees for the accountants counsel.

Pleadings were filed by Valentine on March 17, 1997 and April 7, 1997 (A-105-125) seeking to amend the answer filed on February 1, 1996 and to furnish more specifics as to the fraud. Also, a number of other Motions were filed, along with a complaint against the Personal Representative alleging fraud and forgery with the newly discovered specifics thereof[1].

These multiple filings more specifically and completely detailed the her claims of fraud and specified the method of the forgeries.

On June 27th, 1997 the Probate Judge, without hearing, summarily dismissed all of Petitioners filings, that is the Objection in the form of a Motion filed on February 27th, 1997, all Motions filed on March 17th, 1997, and the new case filed on April 7th, 1997 (A.98-104).

By Order entered March 31st , 1997 the Plaintiff Estate's pending Motion for Summary Judgment was denied.

The Probate Court in that Order held:

> "[the Court] denied the Motions for Summary Judgment because there were many controverted facts which went to the heart of the issues before the Court." (A-94).

In that same Order, on March 31st ,1997, the Probate

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[1] See A-126-128 report of former FBI documents examiner, stating the both signatures on both wills filed were tracings of a third earlier valid signature of the decedent.

Court ruled that Petitioner's caveat to the will contained in her answer violated the six month time limitation contained in District of Columbia Code § 20-305. No mention was made of the extended time where fraud and evasion is present contained in District of Columbia Code § 20-108.01.

Starting on July 2nd , 1997, the "Accounting Bench Trial" was held. The court jacket for that day notes that:

> "Court is only hearing Accounting related issues, Court has determined that there is NO Evidentiary Concern [emphasis in original] as it relates to Caveats and the Court has made it clear that what the Court determined is, a final order has been issued. Counsel have been advised that they may take whatever steps they deemed necessary as it relates to the Court's ruling; The Hearing is to Determine where the Estates assets are, where it started from and where it belongs.(s) J. Christian."

The hearing started with the Testimony of the Accountant hired by the Court. The accountant testified he made the assumption that all of the monies were the property of the estate and that he made no independent investigation of the actual ownership of the accounts or applicable state law.

The court barred presentation of live third party testimony as to the intent of the decedent with respect to his relationship with Valentine. The court barred testimony of Valentine on the subject of actual knowledge of the forgery by the Personal Representative of both of the two wills admitted to probate.

All of the evidence of fraud was excluded, the

evidence of the forgery was excluded,[2] and evidence of her common law marriage was excluded. Petitioner's counsel made written proffers of that evidence as well.

Petitioner was never allowed to enter any evidence of fraud, forgery, or her relationship with the decedent. The Court, in summary, acted throughout that hearing, consistently as if summary judgment had already been entered with respect to ownership of the disputed property when in fact it had not.

The one line provision of the "will" cited foregoing was given summary determinative effect of the intent of the decedent retroactive to 1986, in the instance of the Virginia State Credit Union account, and for the 10 days before death in the case of the Virginia Merrill Lynch account. The "will" was adopted as the Court's own trial exhibit in the "accounting bench trial" without the necessity for proof or verification.

No evidence at all was ever presented of any wrongdoing or tortious conduct by Valentine. Two of Valentine's witnesses were allowed to testify at the accounting hearing. They were the chief executive officer of the Credit Union, and the account manager from Merrill Lynch.

Both testified that the accounts as opened were joint and survivor accounts located in Virginia. Mr. Harris, the

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[2] That evidence was received by Valentine's counsel on February 24th, 1997. It was immediately incorporated into a series of motions, including a motion to allow an amended complaint, and a new case for forgery against the personal representative, Lawrence Elliott. The evidence was a Documents Examination Report which was received from a former FBI documents examiner stating that in his opinion both wills filed by the personal representative were tracings of some third, genuine, but much earlier signature of the decedent (A-127) who could not write as of the purported date of both "wills".

Merrill Lynch account manager testified that the decedent knew full well what he was doing and fully intended to make the transfers to joint and survivor names. He also testified that in fact he, Harris, advised Delaney that was the only way he (Harris) knew to carry out his wishes to avoid probate in the District of Columbia was to have Valentine made the survivor of his joint account.

At the conclusion of the hearing, the probate court took the case under advisement, and on March 28, 1999 entered findings of fact, conclusions of law and Order (A-60-83).

That opinion contained no findings of tortious conduct by Valentine which formed the foundation for the initial jurisdiction of the Probate Court in the District of Columbia.

The Court concluded that the interests of the District of Columbia, where the Decedent died, were superior to those of the Virginia financial institutions and Valentine. It applied District of Columbia convenience account law as opposed to the diametrically opposed result if Virginia law were applied favoring the survivor. Virginia code, § 6.1-125.5, and case law requires clear and convincing evidence of decedent's intent not to overturn the vesting of the survivor with amounts contained in joint and survivor financial institution accounts.

The takings were justified by a finding that the cash accounts were always the sole property of the Decedent. The decedent's inter-vivos transactions and contracts setting up the accounts were given no effect. The Probate ruled in effect, that they had never happened for purposes of determining whether or not those accounts were property of the estate.

The law applied was that of the District of Columbia, in that the properties were ruled estate properties pursuant to

the intent expressed in the will. The live testimony of the Virginia financial institution witnesses was given no force and effect. The Virginia law, with diametrically opposite results requiring clear and convincing evidence of intent not to vest in the survivor, was not applied.

**The Result of this Case on Appeal to Date:**

The District of Columbia Court of Appeals failed to consider that the tort case forming the foundation of its jurisdiction over the Defendant, which was supposed to be tried in the lower court, was not a "will" case. Rather it was a tort case for recapture of property transferred inter-vivos by alleged illegal means.

Both the Probate Court, affirmed by the Court of Appeals (A-20) applied the wrong statute of limitations to exclusions of all of Valentine's strong evidence of fraud as to the expression of intent contained in the forged will.

The Probate Court applied the six month statute of limitations for challenging a will, D.C. Code § 20-305 to exclude all evidence proffered by Valentine to refute the purported expression of intent contained in the "will". The District of Columbia Court of Appeals affirmed that result when it held (at page 17, A-22)

> "We hold that the [general civil] statute of limitations for fraud embodied in the D.C. Code § 12-301 (8) does not apply to will contests under the probate code. Therefor, the six months limitation period of the probate statute applies".

Both Court failed to consider, despite its being brought to their attention in Motions and Petitioner's appeals

briefs[3] the correct statute of limitations to be applied. The rulings of both Courts relied upon this incorrect and inapplicable statute of limitations which would be applicable only where fraud and evasion were absent.

As a factual matter, Valentine's defenses and her complaints of fraud and forgery were initially timely presented *if either* of the fraud statutes of limitations were applied, and later well before any trial date had been set, specifically detailed in Petitioner's amended complaint.

Both lower courts plainly erred in their failure to consider the correct time limits applicable to Petitioner's pleadings of fraud and evasion[4]. In particular, the applicable statute on the specific subject of "Effect of Fraud and Evasion", included in the Probate Code, applicable to the probate division was simply overlooked by both Courts, although brought to the Court's attention well before the ruling limiting the hearing by striking Defendant's pleadings and evidence (See, Probate Order, June 27, 1997, A-98-104).

**The Ultimate Result of this case:**

The seized property was ruled to be Delaney's sole property from the beginning and the status of ownership as appearing in the Virginia contracts of deposit, the signature

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[3] Valentine filed a "Complaint" in the nature of a civil action for fraud on April 7, 1997. In that complaint, the fact that she relied upon District of Columbia Code § 20-108.1(now 20-108.01) was set out specifically on page 4. That code section, which Petitioner relies upon for all purposes, was also mentioned cited in Appellant's brief in chief and on page 48 of the Arguments section of the Appellant's brief in chief.

[4] The General Statue of limitations for presenting evidence of fraud is 3 years (D.C. Code § 12-301 (8). The Statute of limitations specific to Probate proceedings, and presumably Petitioner's defenses to the Tort case filed in the Probate Division, is 2 years, where in the presence of "fraud and evasion" (D.C. Code § 20-108.01).

card, and the testimony of the Virginia financial officers given no weight.

No justification by either court was given for assessment of costs and fees against Valentine, they just were allowed to stand. Counsel, not the named beneficiaries under the forged will, received the great bulk of the monies taken from Valentine. Valentine was forced by the continuing contempt citations by the Probate Court to seek the protection of the Federal Bankruptcy Court.

The District of Columbia Court of Appeals in its decision on page 35 (A-35) addressed the issue of the various due process deficiencies raised by Valentine. The Court ruled that the mention of a "status call" coupled with a pending Motion for Summary Judgment, which was later denied (see Order of March 31st, 1997,A-94), furnished sufficient notice that:

> The trial court recognized that the estate's motion for summary judgment presented several separate but related requests for relief, including a motion for summary judgment on the issue of whether the accounts were part of the estate, a motion for an accounting of the funds, and an embedded motion to bring the funds into the court's "domain" pending resolution of the underlying dispute. This was a reasonable interpretation of the motion and its accompanying proposed order (which required deposit of the disputed funds into the escrow account.)(A-35)

This paragraph in the Court of Appeals Opinion *infers*, a summary judgment of some kind that did not occur, and specifically later was denied. No judgment could have occurred simply because at that stage, no evidence was

properly before the court on any allegations against Petitioner.

That paragraph of the opinion also sweeps aside the fact of the taking and the premature cost assessment, before any judgment or consideration of the evidence, and sweeps aside the Constitutional requirement of a *meaningful* notice, and a *meaningful* hearing to fulfill the Constitutional Due process requirements ***City of West Covina v. Perkins***, 525 U.S. 234, 119 S.Ct 678 (1999).

This Order, enforced before any judgment at all was rendered, required Valentine to pay about $52,000 in costs and fees associated with the auditor's fees (A-4, 5). These actions were contrary to the "American Rule", for assessment of costs and attorney's fees and was by itself, standing alone a substantial taking of property which impacted severely Valentine's ability to defend herself and her property.

Repeated attempts to obtain injunctive relief, in both the trial court and the appellate court, over the next several years were unsuccessful.

**Objections Jurisdictional, Constitutional Due Process and Substantive Errors of the Court Were Presented in the Probate Court and later in the District of Columbia Court of Appeals:**

The following Federal questions were contained in the "Argument" section of Petitioner's Brief in chief to the Court of Appeals. All of these questions had been raised multiple times with the Probate Court. All such objections and motions were denied without comment by the Probate Judge.

**The Following Are Direct Quotes From the Brief in the Court of Appeals:**

II. The Use of the Probate Clerk, and the Judges of the Probate Court By The Removed Personal Representative Deprived the Defendant Valentine, and Her Successors In Interest, On A Continuing Basis, of Their Constitutionally Guaranteed Civil Rights, Freedom of Contract, And Due Process; Which Under Federal Law Those Violations Constitute Continuing Violations of Federal Law By Carrying Out A Conspiracy Under Color of State Law In Violation of 42 U.S.C. § 1983 (Brief Ct App, Pg 28)

IV. The Probate Court, Indeed the Entire Superior Court, Lacked Jurisdiction over the Virginia Accounts (Br. Ct App pg 33)

VI. The Court Erred in Choice of State Law, Assertion of Jurisdiction over Virginia Joint and Survivor Accounts and Constitutional Due Process and Freedom of Contract Violations Occurred in the Processing of this Case (Br. Ct App pg 37)

## ARGUMENT

I. The District of Columbia Superior Court, Probate Division, ab initio, lacked power or jurisdiction to act outside of the forum state, with respect to persons or property located outside of the District of Columbia, in Virginia, and when it did so it violated the 5th, and 14th Amendments to the Constitution of the United States in accordance with the holding stated in ***Hanson v Denckla***, 357 U.S. 235, 78 S.Ct. 1228, 2 l. Ed. 2d. 1283 (1958).

**Facts summarized as related to this issue.**

Defendant Valentine lived in Petersburg, Virginia about 120 miles from the District of Columbia. She acquired

her interests in two joint and survivor accounts inter-vivos from the decedent. She acquired one seven years before death, and other ten days before death from her long time companion, the decedent.

The funds were deposited in Virginia financial institutions pursuant to Virginia contracts of deposit. It is admitted that the bulk of the funds came from Mr. Delaney. If Virginia property law is applied to these accounts as of the date of death of the decedent, the balance vests in the survivor[5].

Jurisdiction was challenged by Valentine by special appearance. The court found that it had jurisdiction by virtue of tortious conduct alleged in the complaint against her, with allegations of tortious wrongful conduct in the District of Columbia with respect to decedent's property. After denial of the jurisdictional challenge, Valentine filed her answer, denying under oath all allegations of the tortious conduct and also pleading that the entire situation was the result of fraud and forgery.

The allegations of tortious conduct proved unfounded, and were never found to have occurred by the Probate Court, either orally or in findings or in a judgment. Therefore, the rule of ***Hanson, supra*** is applicable.

After Ordering seizing the accounts (see Issue II) the

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[5]**Virginia Code:**

§ 6.1-125.1(1) ...account... a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, a savings account, a certificate of deposit, share account and other like arrangement.

6.1-125.5 Right of survivorship. A. Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created.

Probate Court struck all of Valentine's pleadings particularizing the fraud central to her defense to the tort case against her. As a consequence, at no time did any substantive trial as to the real issues of ownership take place or the credibility of the witnesses against her.

The entire emphasis of the court was placed upon the *inapplicable* provisions of the will as an expression of intent applied retroactively, in one case seven years. Of course, the provision in the will, whether valid or forged, did not have any proper bearing on intent to make any pre-death transfers. An "accounting bench trial" hearing was held as to the source of the funds under dispute, and where the funds remained at the date of the hearing, but nothing else.

The Probate Court noted on the opening day of the "accounting hearing" that there were "NO Evidentiary Concerns" (Court Jacket, July 2, 1997). This decision, which the Court thereafter followed without deviation, meant that all judgments had already been rendered, decided and were finished. This decision was without any hearing at all as to the ownership of the disputed accounts.

As to non-forum property, this cannot be the law. As to a fraud situation, and a forged will situation this cannot be the law. What more definite deprivation of Constitutional rights and Due Process of law could possibly exist. There was simply never a trial, and no opportunity to be heard.(Court jacket, handwritten notation, July 2, 1997, stated verbatim, in statement of the case foregoing, Pg. 7.)

Thereafter, consistently with all matters, no defenses of Valentine to the taking of her property were allowed. The fact of the one line statement of intent in the "will" was given retroactive effect to trump, or exclude all evidence presented by Valentine.

Valentine's filings included very specific references to the District of Columbia code sections that allowed two

years for bringing an action for relief in the presence of fraud and evasion, which Valentine had clearly and specifically pled in her timely amended complaint.

Upon the conclusion of the hearing, at which all of Valentine's evidence of fraud and forgery was excluded the court entered findings of fact and conclusions of law. Those findings (A-60-83) did not include one scintilla of findings or cite to one item of evidence demonstrating any wrongdoing at all by Valentine, either in the District of Columbia or elsewhere.

Thus it is apparent from the findings of the trial court, that Valentine was haled into court, and her property taken, based entirely upon false and never proven allegations of misconduct that never occurred. This is an exercise of unconstitutional extra-territorial jurisdiction by the Probate Court.

**Standard Applicable To An Exercise of Jurisdiction Outside of the Forum State:**

This Court in ***Hanson v. Denckla***, 357 U.S. 235, at 249, 250, 78 S.Ct. 1228 (1958) noted the rarity of a jurisdictional excess as displayed in this case. It held [footnotes omitted]:

> [14][15] Prior to the Fourteenth Amendment an exercise of jurisdiction over persons or property outside the forum State was thought to be an absolute nullity, [FN21] but the matter ***250** remained a question of state law over which this Court exercised no authority. [FN22] With the adoption of that Amendment, any judgment purporting to bind the person of a defendant over whom the court had not acquired in personam jurisdiction was ****1238** void within the State as well as without. Pennoyer v. Neff,

> 95 U.S. 714, 24 L.Ed. 565. Nearly a century has passed without this Court being called upon to apply that principle to an in rem judgment dealing with property outside the forum State. The invalidity of such a judgment within the forum State seems to have been assumed--and with good reason. Since a State is forbidden to enter a judgment attempting to bind a person over whom it has no jurisdiction, it has even less right to enter a judgment purporting to extinguish the interest of such a person in property over which the court has no jurisdiction. [FN23] Therefore, so far as it purports to rest upon jurisdiction over the trust assets, the judgment of the Florida court cannot be sustained. Sadler v. Industrial Trust Co., 327 Mass. 10, 97 N.E.2d 169.

**The Actions of the Probate Court Violated That Standard:**

The actions of the District of Columbia Superior Court, Probate Division, in seizing the property of the Petitioner, Valentine and assessing costs on their face, violate Constitutional Due Process and allow a fraudulent conspiracy[6] exploiting the District of Columbia Court system, under color of state law. If this ruling is allowed to stand, which has now become the law of the District of Columbia via the approval of the Court of Appeals, a major schism is created approving the use of fraud so long as the perpetrator is clever enough to delay resolution a mere six months. This stricture does great violence to the concept of justice within the framework of reasonable time constraints where fraud is

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[6] In violation of 42 U.S.C. § 1983.

involved. Moreover, Petitioner Valentine was diligent to defend her rights as soon as she was sued. As a resident of Virginia, 120 miles from the District of Columbia, she can not be held to have a duty to challenge a "will" whether forged or not, until her own property rights to property she is vested with come under attack.

To apply the six month statue of limitation to her defenses, as opposed to a will challenge is simply not the intent of any applicable statute of limitations. It violates the entire concept of the rule of law within the fabric of existing constitutional law. And it is no minor schism. The actions by the Probate Court in this case are sufficient to shake the faith of any reasonable person in the rule of law itself.

As in ***Hanson, supra***, Valentine had no business or contacts in the District of Columbia except for her friend. Petitioner Valentine argues that ALL of the actions of the Probate Court with respect to her and her property were without any jurisdiction by the Probate Court over her property which was rightfully hers by operation of Virginia law.

One state (Or here the Federal District of Columbia) simply has no business interfering with the laws or property of citizens of another state without good reason and actual, not merely alleged, jurisdiction to do so. Here, a good reason for these extraterritorial actions was alleged, tortious conduct in the District of Columbia. But those allegations were false, unproven and made by the forger of the underlying documents.

That essential, underlying jurisdictional foundation for the case was by-passed and never acted upon. It follows that the rule of ***Hanson v. Denckla, supra,*** applies.

Certiorari should be granted to allow a full presentation of the happenings and Constitutional violations pertaining to this issue, the improper exercise of extra-

territorial jurisdiction by the Probate Court.

**II.** The Probate Court of the District of Columbia, in seizing the funds in Virginia joint and survivor accounts and assessing costs and fees, under threat of incarceration, without notice, before any hearing or judgment, conducted an illegal taking of liberty and property in violation of the 5th and 14th Amendments to the Constitution of the United States, and contrary to the holdings in a line of cases including ***Fuentes v. Shevin***, 407 U.S. 67, 92 S.Ct. (1983).

**Facts and Status of the Case At the Time of the Seizures of Petitioner's Property, Summarized:**

On January 23, 1997 Petitioner and her counsel appeared in the Probate Court pursuant to a notice of a status call sent out by the Court.

The status at that time was that Defendant/Petitioner had been sued and had objected to the jurisdiction of the District of Columbia Courts. She had been found by the Probate Court to be subject to the jurisdiction of the District of Columbia by reason of alleged, but as yet unproven tortious conduct in the District of Columbia (Opinion A-87-93).

She had filed her Answer, under oath, denying any and all misconduct. Her answer also was filed within the two years allowed by the Probate statute for filing a challenge to any filing involving fraud or evasion (See Argument III following)

Prior to the "status call" on January 23, 1997 there was no notice of any proposed taking of her property. At that hearing, summarily, she was threatened with incarceration, and told to bring the monies then residing in her solely owned accounts into the jurisdiction of the Probate Court (A-1-3).

No evidentiary hearing at all was then held as to her

rights to the property[7]. There was no evidence then before the court of any facts upon which to base a determination of ownership of the joint and survivor cash accounts then held in her name and for which she had filed timely responses to all Court orders.

Nevertheless, without any finding of facts, indeed without taking any evidence at all to support the court's actions, her property was seized, and she was assessed, again under direct threat of incarceration, significant costs and fees.

The Probate Court, under District of Columbia practice, may be regarded as either (1) a Court of General Jurisdiction, or (2) one of limited jurisdiction depending upon the matter before the Court[8]. Regardless of its status in this case, it is bound by Constitutional limitations on its power and actions. The due process requirements of the 5th and 14th amendments are some of those limits. Those principles and constraints are set out following.

**Standards Applicable To Procedural Due Process:**

As stated by the Court in ***Fuentes, supra***, the requirements of procedural due process are as follows:

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In fact, no evidentiary hearing on her defenses, timely asserted with respect to the Tort claims against her, and in the presence of clearly forged wills, and fraud and evasion was ever allowed. See argument on statute of limitations and violations of her right to a fair trial following.

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In this case, Valentine's position is that the Probate Court was called upon in her case to decide ONLY whether any wrongful taking had occurred inter-vivos with respect to decedent's property. None such occurred, and none COULD have occurred since Defendant Valentine received permission, and presented evidence that it was decedent's predeath wish for her to take the property they placed in the joint accounts. Under District of Columbia law, there could not have been any tortious conversion of the property, nor was any found to have occurred.

IV

[1][2] For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Baldwin v. Hale, 1 Wall. 223, 233, 17 L.Ed. 531. See Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed. 914; Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215; Grannis v. Oredean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363. It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62.

...

[3][4] The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not *81 only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment--to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference. See Lynch v. Household Finance Corp., 405 U.S. 538, 552, 92 S.Ct. 1113, 1122, 31 L.Ed.2d 424.

These venerable principles have been consistently applied even to a taking without due process where a later tort claim (as here) could have corrected the wrongdoing ***Zinermon, v. Burch***, 494 U.S. 113, 110 S.Ct. 975 (1990).

> [2] The Due Process Clause also encompasses a third type of protection, a guarantee of fair procedure.
>
> ....
>
> ... In procedural due process claims, the deprivation by state action of a constitutionally protected interest in "life, liberty, or property" is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law. [citations omitted]* ...
>
> Therefore, to determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law.

Due process requires that an owner whose property is taken must first be given a hearing and the right to such a hearing is meaningless without notice. In general adequate notice under the due process clause of the Constitution must be reasonably calculated to inform parties of proceedings which may directly and importantly affect their ownership rights. ***Walker v. City of Huchinson, Kansas***, 352 U.S. 112, 77 S.Ct 200 (1956).

In situations where a state can feasiblely provide a pre-deprivation hearing before taking property, it generally must do so regardless of he adequacy of postdeprivation tort remedy to

compensate for the taking ***Zinermon, supra***.

Where, as here, threats of incarceration resulting from non-compliance were made, Petitioners liberty was indeed threatened, and her right to some kind of a hearing was paramount ***Board of Regents of State Colleges v. Roth***, 408 U.S. 564, 92 S. Ct 2701 (1972).

Finally, the Constitutional right to procedural due process is not intended to promote efficiency or accommodate all possible interests: it is intended to protect the particular interests of the person whose possessions (or property) are about to be taken. The Constitution recognizes higher values than speed and efficiency *Arnett v.Kennedy*, 416 U.s. 134, 94 S. Ct 1633 (1974).

The normal due process safeguard serve a valuable purpose. That purpose is to give the owner of property time to mount a defense and present evidence in protection of his property. The minimum Constitutional Due Process procedures simply were not followed in this case. Those circumstances and violations are set forth following in III.

A writ of Certiorari should issue to prevent a major schism between the application of law of seizures before judgment and meaningful hearing requirements applicable in all of the states, and in the District of Columbia. This Federal District should not be allowed to disrupt the long-standing and unquestionably sound application of Constitutional procedural standards set out in Fuentes, supra, and subsequent cases.

III. The Probate Court's actions denying hearing, and denying acceptance of evidence on all of Petitioner's defenses, including forgery, fraud and evasion, timely presented in defense of a

collateral tort lawsuit filed by an Estate against Petitioner in favor of the six month statute of limitations for presenting a caveat (will challenge), and in ignoring the statute of limitations specific to fraud and evasion, resulted in a violation of due process of law as contained in the 5th and 14th Amendments to the Constitution of the United States.

**Misapplication of the Statute of Limitations:**

A notice of an "After acquired will" was sent to Valentine on March 28th, 1994 (Pg. 15 of Opinion, D.C. App, A-20). Valentine filed her verified answer to the complaint against her on February 1, 1996. That verified answer contained allegations of fraud and forgery, as well as her denials of all charges. That Answer was accepted into the record of this case. Later, well before the "trial" was scheduled, and before any pleadings were stricken, Valentine filed her Amended Answer specifying in great detail the forgery and fraud perpetrated upon her and the Court system.

Until those allegations of fraud and evasion, and indeed fraud upon the probate court itself were heard, it can not be denied that the applicable code section was either, the probate code section dealing with fraud and evasion, § 20-108.01 or the general District of Columbia catch all statute § 12-301-(8). In either case, Valentine's pleadings were timely and thus, properly before the Probate Court.

The correctly applicable code section,§ 20-108.01 was brought to the attention of the Probate Court in contemporaneous filings, and in petitioner's brief in the District of Columbia Court of Appeals. That code section provides for a two (2) year statute of limitations for asserting fraud or evasion § 20-108.1(a) and an unlimited time for challenging the effect of any documents filed containing fraudulent materials § 20-108.1(b). Thus, the striking of all of Valentine's substantive pleadings as untimely assertions of defenses was

plain error.

Much later, the District of Columbia Court of Appeals fell into the same trap. It ruled ( see Opinion, page 15) despite finding that Valentine received notice of the forged will on March 28, 1994, and filed her answer on February 1, 1996, a period of less than 2 years. (A-20):

> "... for it is clear that a reasonably diligent inquiry could have been completed substantially more than six months before Valentine filed her attack on the will in March of 1997. Under the probate statute, that statutory clock ran out six months after such inquiry could have been concluded. Therefore, even allowing full play for the discovery rule in applying § 20-305, Valentine's attack on the will in March of 1997 came far too late.

**The Cumulative Due Process Effect of these Errors of Procedure:**

Putting all of these errors together, Valentine was deprived of any fair opportunity to present any material or determinative facts to the Court.

Her property rights protected by the 5th and 14th amendments to the Constitution were not created by the Constitution. Rather, they were and are created, and their dimensions defined, by existing rules or understandings that stem from an independent source, such as state law. ***Cleveland Bd. Of Education v. Loudermill***, 470 U.S. 532, 105 S.Ct. 1487, 84 L. Ed2d 494 (1985).

The Probate Court's actions resulted in the unfair and one sided application of the statute of limitations, six months for Valentine's defenses, and more than seven years as to the jointly owned property residing in the credit union.

The Court should note that the Virginia property had been in her hands, in one instance for seven years, and in the

other for far longer than six months before the seizures or the complaint being filed.

The failures of the court to allow her defenses to the tort claims to be asserted, and the failure to allow evidence to refute the false allegations of tortious conduct were grave and egregious violations of her property rights under the Constitution.

The District of Columbia Court of Appeals recognized that proper application of the statute of limitations was a fact driven decision. Although both Courts below recognized the existence of Defendant/Petitioner's pleadings of the fraud, both rejected her pleadings and defense evidence in favor of the short six month statute for a will challenge[9].

But surprisingly, both the Court of Appeals, at page 15 of its opinion (A-20) and the Probate Court (A-100-103) utterly failed to consider that the fact of forgery and fraud was timely and repeatedly pled by the Petitioner and that of record, those pleadings were supported by substantial evidence of forgery, fraud and evasion[10]. Nothing more is required of the Petitioner to bring the fraud statute of limitations into play, at least until the court dispensed with the allegations as incorrect. Not only was this never done, the allegations of Valentine were and are in fact true and she is entitled to a trial by jury to decide that point. This simply never happened.

Thus, the failure to have any hearing on the substantive

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[9] Both Court however, failed to recognize the big difference in position in petitioner's presenting her defenses to the tort case against her and her presenting a will challenge. The ultimate ruling of both courts was that all information of whatever nature is excluded from a collateral Probate Court case to bring inter-vivos transfers back into the Estate, a situation entirely different from a "will" challenge. That ruling is directly contrary to the Probate Statute, § 20-108.01.

[10] See A-126-128, the opinion of Expert former F.B.I documents examiner.

matters before taking her property, or even after the taking, without any trial[11], resulted in a grave miscarriage of justice, wherein a perpetrator of a forged will received the full benefit of the law simply because the forger was clever enough to delay matters before the probate court.

**Conclusion:**

A writ of Certiorari should be granted to make it clear that a Probate Court has no more business overstepping constitutional bounds than any other Court. To allow this case to stand violates Constitutional Due Process and geographic limitations on an individual state's power and jurisdiction. Review is necessary to prevent the violations contained herein, to preserve the hundreds of years old principles requiring a state to only act only with respect to persons and property within its own geographic and temporal jurisdiction.

Consideration of this case by this Court is also necessary to prevent a schism between Constitutional law and principles as practiced in the District of Columbia and the rest of the nation. For truly, these jurisdictional violations have no precedent anywhere to be found in other state law. And if there were such egregious violations of the right to a fair and impartial hearing, it would surely be dealt with in summary fashion.

The seizures of property, along with the assessments of costs and attorney's fees, without any trial or substantive evidentiary hearing, never cured by a later trial has resulted in a trampling of procedural process rights in violation of nearly

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[11] In a separate complaint, which also was stricken by the Probate Court, Valentine demanded a jury trial. That complaint was within the five year statute of limitations applicable to participants in the fraud. That denial is also, for the same reasons, a denial of due process based upon misapprehended law.

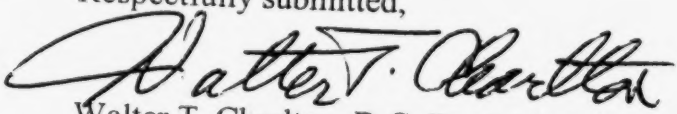
fifty years of precedent based on principles of adequate notice, a meaningful hearing, and the right to present rebuttal evidence.

None of this happened in this case.

The statute of limitations excuse for performing the violations, as applied by both lower courts was quite simply, an error in failing to read Valentine's pleadings, which specified the District of Columbia code with particularity. Only if her pleadings are entirely stricken, by failing to hold a hearing on those allegations, can the result of this case stand. And that can not be the law simply because procedural due process requires a hearing and opportunity to rebut allegations before any taking becomes effective.

To favor form over substance, and thereby to take property is what our Constitution prevents. The result of this case, if allowed to stand, does grave violence to the very fabric of our Constitution as well as the rule of law. For this reason, Certiorari should be granted on all issues herein.

Respectfully submitted,



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